

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

J.B.D.L. Corp. d/b/a)	Civil Action No. C-1-01-704
BECKETT APOTHECARY, et al.,)	
)	Judge Sandra S. Beckwith
)	Magistrate Judge Timothy S. Hogan
Plaintiffs,)	
)	
v.)	
)	
WYETH-AYERST LABORATORIES,)	
INC., et al.,)	
)	
Defendants.)	

DIRECT PURCHASER CLASS PLAINTIFFS'
MOTION FOR LEAVE TO FILE SUR-REPLY MEMORANDUM OF LAW
IN FURTHER OPPOSITION TO WYETH'S MOTION FOR SUMMARY JUDGMENT

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Dated: April 12, 2005

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Direct Purchaser Class Plaintiffs believe that this short Sur-Reply Memorandum is necessary to ensure and protect a clear and accurate record, and to provide the Court with a complete and correct understanding of the new arguments that Wyeth has improperly raised for the first time in its Reply in Support of Summary Judgment (Doc. #155). Direct Purchaser Class Plaintiffs (“Plaintiffs”) therefore respectfully move this Court for leave to file the attached Sur-Reply Memorandum to briefly address certain of Wyeth’s new arguments and inaccurate representations its Reply Brief.

The attached Sur-Reply Memorandum briefly answers and clarifies the following new arguments and inaccurate assertions:

1) Wyeth’s incorrect assertion that Plaintiffs state that conduct is exclusionary only where “it was ‘impossible’ for Cenestin to compete with Wyeth’s rebates” (when Plaintiffs never so stated and the law is to the contrary);

2) Wyeth’s wholly new and inaccurate argument that Plaintiffs have “erroneously” assumed that Wyeth bundled rebates on all of Wyeth’s products, rather than “only” on the various blockbuster products that make up the “Premarkin Family” bundle (when Plaintiffs, in fact, showed that Wyeth’s conduct was improperly exclusionary whether or not Wyeth’s admitted “bundling” was “restricted” to “only” to the Premarin Family products (or indeed, only to the inelastic portion of Premarin sales base standing alone) and in any event Wyeth *did indeed* bundle rebates on all of its products, not just the “Premarkin Family”);

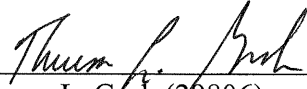
3) Wyeth’s new eight-page reply discussion of the unreported decision in *N.W.S. Michigan, Inc. v. General Wine & Liquor Co.*, 58 Fed. Appx. 127 (6th Cir. 2003), to which Wyeth had devoted just a few passing lines in its opening brief (which discussion ignores the key material differences between *N.W.S. Michigan* and this case); and

4) Wyeth's new argument that it had "valid business reasons" for the exclusionary conduct Plaintiffs have challenged (when its own principal economic expert did not opine on the subject, and merely by raising such a defense Wyeth is necessarily admitting that its conduct is not simple "price cutting" and was indeed exclusionary).

Based upon the foregoing, Plaintiffs respectfully move for leave to file the attached Sur-Reply Memorandum of Law in Further Opposition to Wyeth's Motion for Summary Judgment.

Dated: April 12, 2005

Respectfully submitted,



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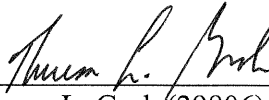
CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2005, I electronically filed the Direct Purchaser Class Plaintiffs' Motion For Leave To File Sur-Reply Memorandum of Law in Further Opposition to Wyeth's Motion for Summary Judgment with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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